

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WARREN LEE MACKEY,

Defendant.

8:19CR329

MEMORANDUM AND ORDER

This matter is before the Court pursuant to Defendant's motion to reconsider, [Filing No. 198](#), filed August 15, 2025, this Court's Memorandum and Order, [Filing No. 178](#), filed May 15, 2024. Defendant contends that this Court filed the Memorandum and Order prior to the date it should have been decided. The Court has carefully reviewed the motion and will grant his motion for reconsideration.

BACKGROUND

On May 29, 2025, this Court entered two Memorandums and Orders, one denying Defendant's motion for relief for DNA testing, [Filing No. 184](#), filed July 15, 2024, and the other for filing a successive petition, [Filing No. 193](#), filed March 24, 2025. [Filing No. 195](#) and [Filing No. 196](#). Thereafter, Defendant filed this motion to reconsider.

Defendant contends that “[I]n Docket No. 155 and 156, Mackey moved this court to hold in abeyance a Motion To Vacate his sentence under [28 U.S.C. § 2255](#), due to him filing to [sic] early on the mistaken belief that the 1 – year deadline ran from the date of his sentencing. On 07/24/2023 this court granted that motion placing his §2255 in abeyance stating ‘the court will hold Mr. Mackey 's motion in abeyance until the completion of his pending appeal.’ This court went on to state, ‘Mr. Mackey will have the

option to appeal further to the United States Supreme Court within 90 days of that decision.' Lastly, 'from that date, Mr. Mackey will have 1 year to change or add claims to his motion.'" (Doc. #158)." [Filing No. 198](#) at 1. Further, Defendant argues that "On 10/02/2023 Mackey's appeal was denied. (Doc. #160). He submitted a Petition for Certiorari on 02/23/2024, (Doc #163) which was subsequently denied on 03/19/2024 (Doc. #164). Pursuant to the Prison Mailbox Rule, Mackey's amended § 2255 was submitted on 03/18/2025, and docketed on 03/28/2025. (Doc. #193)." *Id.* The Defendant argues that the Court determined his motion for reconsideration prior to the expiration of these times.

DISCUSSION

The Court finds the following sequence took place. Defendant filed his initial [28 U.S.C. § 2255](#) claim on or about March 9, 2023. [Filing No. 155](#), March 9, 2023. The Court then filed an Order holding the 2255 motion in abeyance until the latter of the Court of Appeals Ruling or the United States Supreme Court ruling. [Filing No. 158](#). The ruling was filed on July 24, 2023, and this Court gave him one year after the final filing to amend his § 2255 motion. *Id.* The Eighth Circuit filed its judgment on October 2, 2023. [Filing No. 159](#). Defendant filed with the United Supreme Court on February 23, 2024. [Filing No. 163](#) and [Filing No. 164](#). The Supreme Court denied certiorari on March 19, 2024. [Filing No. 164-1](#). The Court then issued its Memorandum and Order for initial review on May 14, 2024, [Filing No. 178](#), and addressed the merits of Defendant's motion for 2255 relief as requested in [Filing No. 155](#). The Court summarily denied Defendant's motion. The Defendant then filed his DNA request, [Filing No. 184](#), filed July 15, 2024, which this Court denied at [Filing No. 187](#) on September 23, 2024, and a motion for copies, [Filing](#)

No. 185, filed July 19, 2024. The Magistrate Judge denied the motion for copies, [Filing No. 186](#) on July 22, 2024. On March 24, 2025, Defendant filed another motion pursuant to 28 U.S.C. § 2255. [Filing No. 193](#). This Court denied the § 2255 motion, [Filing No. 196](#) on May 20, 2025, as it relates to [Filing No. 193](#). Defendant then filed his motion for reconsideration, [Filing No. 198](#) on August 15, 2025, contending that this Court prematurely filed its Memorandum and Order with regard to his motion for relief, [Filing No. 193](#).

Based on the above, the one-year time period started March 19, 2024, and it would have expired on or about March 18, 2025. Defendant filed within the one-year time period, plus mail time, given to him by the Court. As a result, the Court finds that the additional filing of his § 2255 motion on March 24, 2025, was timely. The Court will, therefore, give Defendant 60 days from the date of this Memorandum and Order to file any additional material he wants the Court to consider, if any. The Court will thereafter review the merits of the claims, determine if the government shall be ordered to respond, and thereafter file a Memorandum and Order.

THEREFORE, IT IS ORDERED THAT Defendant's motion for reconsideration, [Filing No. 198](#), is granted as stated herein.

Dated this 5th day of December, 2025.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge